used words to include those persons who previously had been moneylenders under the old Ordinance. In section 24 of the new Ordinance the legislature expressly dealt with loans made before the 11th September, 1959. If it wanted to include former moneylenders it would have been a simple matter to have done so. In my view the appellant is not a moneylender within the meaning of the new Ordinance and accordingly section 24 thereof does not apply to him.

One further matter remains to be disposed of. The learned District Judge on the facts held that the appellant had failed to discharge the onus cast upon him by section 24 and went on to say that he had serious doubts that the sum of $400 was lent by the appellant. He accepted the evidence of the respondent that only $100 was lent and gave judgment accordingly. The two matters which appear to have influenced the learned District Judge in coming to his findings of fact were:—

(1) the application of section 24 to these proceedings; and

(2) the improbability of a moneylender lending $400 to a borrower drawing $135 a month without any security.

I have already dealt with the first point while as to the second, I find myself unable to agree with the learned District Judge's conclusion.

In these circumstances, therefore, the appeal must be allowed and the judgment of the learned District Judge set aside and judgment entered for the appellant for $461.88 and costs both here and in the Court below.

At the hearing of this appeal, the respondent was not present and was not represented by Counsel but Mr. Gould appeared as *amicus curiae* and I am indebted to him for his assistance.

Appeal allowed.

Solicitors: *K. K. Bezboruah; Rodyk & Davidson.*

THE SINGAPORE HARBOUR BOARD v. IINO KAIUN KAISHA LTD.

[O.C.J. (Wee Chong Jin J.) March 9, 1961]

[Singapore — Admiralty Suit No. 14 of 1959]

Negligence — Collision between tug and ship — Master and crew of tug deemed to be servants of owners of ship — Whether owners of ship liable for negligence of crew of tug — Whether provision of incompetent crew amounted to fundamental breach of contract.

The Singapore Harbour Board were the owners of a steam tug, the *Pitho*, which sank when it collided with the defendant's ship, the *Takashima Maru*. The two questions which the Court had to consider were: (a) what was the cause of the collision, and (b) whether the towage conditions as specified in the towage contract applied to make the defendants liable. The relevant clause in the towage contract reads:

"Vessels and craft will be towed on the following conditions only:—

The master and crew of any tug whilst carrying out towage service shall be deemed to be the servants of and shall be under the orders and control of the owners, master and crew of the vessel or craft towed and the Board will not be answerable for any loss or damage whatever which may happen to or be occasioned by any vessels, boat or craft or any cargoes on board the same whilst such vessel boat or craft is in tow of or being assisted by any of the tugs of the Board and whether arising from any supposed negligence or default of the master or crew or from any defects or imperfections of the Board's tugs or machinery or towing gear however occasioned, and the owners or persons interested in the vessels, boats or craft or of the cargo on board the same so towed undertake to bear, satisfy and indemnify the Board against any such loss or damage."

Held: (1) no blame can be attached at all to the pilot for the collision. The collision was entirely due to the quartermaster of the *Pitho* negligently executing an order from his Serang to put the helm to starboard by putting the helm to port;

(2) at the time of the collision the *Pitho* had in response to orders from the pilot manoeuvred herself into a position alongside the starboard bow of the *Takashima Maru* for the purpose of taking in the tow line and one end of the tow line had been received by the crew of the *Pitho* though not made fast to the towing hook; the collision therefore occurred "whilst [the *Pitho* was] carrying out towage service" and the towage conditions applied;

(2) there was no fundamental breach of the contract of towage as one isolated act of negligence on the part of the helmsman was no evidence that the crew of the *Pitho* were incompetent;

(3) as the collision had occurred through the negligence of the helmsman of the *Pitho* whilst the *Pitho* was carrying out towage service, the defendants as owners of the *Takashima Maru* were vicariously liable to the plaintiffs for the negligence of their temporary servants.

Cases referred to:—

(1) *The Baltyk* [1948] P. 1.

(2) *The President van Buren* 132 L.T. 253.

ADMIRALTY ACTION.

C. H. Smith for the plaintiff.

J. E. Lloyd for the defendant.

Cur. Adv. Vult.

Wee Chong Jin J.: This is an Admiralty action *in personam* by the Singapore Harbour Board, the owner of the steam tug *Pitho* against Iino Kaiun Kaisha Ltd., the owners of the turbine-engined vessel *Takashima Maru* arising out of a collision between these two vessels which resulted in the sinking of the tug.

The collision occurred at about 7.20 p.m. on the 7th February, 1959, at the western entrance into Keppel Harbour while both vessels were passing through Keppel Heads. At the time of the collision the *Takashima Maru* with a draught of about 31 feet and heavily laden with general cargo was inward bound, and the *Pitho* had been engaged, at the request of the pilot on board the *Takashima Maru*, to provide towage service. The weather was good and the tide was flood of the force of approximately 3 to 4 knots and flowing west. At the time and generally there were strong currents and eddies in the area of water off Keppel Heads.

The *Takashima Maru* had arrived off Singapore at 7.25 p.m. the previous evening and was awaiting her turn to enter Keppel Harbour. The pilot assigned to take her in boarded her at 5.50 a.m. the next morning where she was anchored off the Eastern Quarantine Anchorage. Twenty minutes later she weighed anchor and proceeded towards the western entrance of Keppel Harbour. By the time she was lined up to

enter Keppel Harbour through Keppel Heads the time was 6.50 a.m. and at that time she was standing off with her engines off but with sufficient power to continue to make headway waiting for the signal to enter the Harbour. The pilot had by that time signalled to the plaintiff that she required the assistance of a tug and in response to that signal the plaintiff despatched the *Pitho* at 6.50 a.m. from Albert Dock entrance. The engines of the *Takashima Maru* were restarted, according to the Engine Movement Logbook, at 7.09 a.m. According to the pilot, he sighted the *Pitho* when the *Takashima Maru* was about 5 or 6 cables from Keppel Heads. When the *Pitho* had got into a position on the starboard side of the *Takashima Maru* parallel to and travelling in the same direction, as the *Takashima Maru*, both vessels were then less than 5 cables from Keppel Heads. The *Takashima Maru* was then travelling at a speed through the water of about 2 knots. The pilot then gave orders to the *Pitho*, which was just front of amidships of the *Takashima Maru*, to proceed to the bow of the *Takashima Maru* to take the tow line.

When the *Pitho* had reached a position where the necessary operation for taking the tow line could be carried out, the *Takashima Maru* was then approximately 3 cables from Keppel Heads and still travelling at a speed through the water of about 2 knots. According to the Serang of the *Pitho* he received the order to take the tow line when his tug was in a position alongside the bridge of the *Takashima Maru*, and it took him some time to get his tug to a position alongside the bow of the *Takashima Maru*. His evidence is that when in position he gave orders for the heaving line to be thrown to the *Takashima Maru*, but it was only on the third attempt that the *Takashima Maru* received the heaving line which was then tied to the tow line. The tow line was then immediately lowered and the crew of the *Pitho* immediately started to take in the tow line. At that stage of the operations his tug was about 30 feet clear of the *Takashima Maru*, but when the tow line was effectively fastened to the hook of his tug, it had drawn closer to the *Takashima Maru*. However, he never thought there would be any danger to his tug. He then noticed his tug wandering towards the *Takashima Maru* and he accordingly gave orders to his quartermaster to turn to starboard which orders he assumed had been correctly carried out because he heard the sound of the steering wheel being turned. The quartermaster was at that time steering the *Pitho* by taking up a position facing the stern of the tug and standing on the starboard side of the tug. Immediately after he, the Serang, gave the order to turn to starboard, which was the only order he gave throughout the operation of making fast his tug to the *Takashima Maru*, the stern of the tug collided with the starboard side of the *Takashima Maru* and soon after his tug capsized and sank. There was conflicting evidence on the part of the plaintiff's witnesses as to whether one end of the tow line had been made fast to the hook of the tug. The Serang said it had but two deckhands who both assisted in hauling in the tow line said it had not been made fast at the moment of the collision and, although in my view nothing turns on whether or not the eye of the tow line had been fastened to the hook of the tug, I accept the evidence of the two deckhands, so that I find on the evidence that the tow line was not fastened at either end at the actual moment of impact.

The place of the collision was agreed by both parties in their Preliminary Acts as approximately Latitude 1° 15′ 39.5″ North and Longitude 103° 48′ 22.5″ East, and on the advice of the Assessor, whose advice I have accepted, this would show that the collision took place in the waters almost opposite Keppel Heads. The pilot's evidence is that when the *Pitho* reached the bows of the *Takashima Maru* in response to his order to take the tow line, the *Takashima Maru* was then about 3 cables from Keppel Heads. I accept this evidence as also do I accept his evidence that from the time the *Pitho* had taken up a position parallel to the *Takashima Maru* to the time of the collision he was maintaining a minimum speed consistent with the vessel's safety, bearing in mind the draught of the vessel and that this speed was not more than 3 knots.

In my view, it is clear on the evidence and in the conditions pertaining that morning that no blame can be attached at all to the pilot for this unfortunate collision in that he was not negligent in giving the order to the *Pitho* to take the tow line at the time he gave the order. He was not handling the *Takashima Maru* at a speed too fast for the *Pitho* to take a tow line and he was under no duty to abandon the operation when it turned out that it could only be completed in or after passing the tidal conditions at Keppel Heads. In my view the collision was entirely due to the quartermaster of the *Pitho* negligently executing an order from his Serang to put the helm to starboard by putting the helm to port, as a result of which the *Pitho* collided with the *Takashima Maru*, and had this order been correctly executed this collision would not have occurred. This negligent act of the quartermaster may well have arisen from the fact that he was steering the *Pitho* by taking up a position facing the stern of the *Pitho*. Notwithstanding the oral evidence of the quartermaster that he properly executed this order the undisputed fact is that when the *Pitho* was salvaged the rudder was found in a position hard to port and the wheel in a similar position. It is suggested that as the *Pitho* was sinking a loose object or a drowning hand might have moved the wheel from its true position of hard to starboard to the position hard to port when the *Pitho* touched the sea bed, but I dismiss that suggestion as pure fiction, and I am fortified in so doing when, as I have been advised by the Assessor, it requires several turns of the steering wheel to bring it from a position hard to starboard to a position hard to port.

This disposes of the plaintiff's claim based on the negligence of those in charge of the *Takashima Maru* and I now turn to consider the more substantial claim based on the towage contract which provides as follows:—

"Vessels and craft will be towed on the following conditions only:—

The master and crew of any tug whilst carrying out towage service shall be deemed to be the servants of and shall be under the orders and control of the owners, master and crew of the vessel or craft towed and the Board will not be answerable for any loss or damage whatever which may happen to or be occasioned by any vessels, boat or craft or any cargoes on board the same whilst such vessel boat or craft is in tow of or being assisted by any of the tugs of the Board and whether arising from any supposed negligence or default of the master or crew or from any defects or imperfections of the Board's tugs or machinery or towing gear however occasioned, and the owners or persons interested in the vessels, boats or craft or of the cargo on board the same so towed undertake to bear, satisfy and indemnify the Board against any such loss or damage."

On behalf of the defendants it is contended that these towage conditions (even if they can be relied on) cannot be prayed in aid by the plaintiff in that the plaintiff had committed a fundamental breach of the contract of towage by providing an incompetent crew to man the *Pitho* that day. I do not think it necessary to refer to the various authorities cited to me on this principle for I can see no justification for coming to the conclusion on the facts that the crew of the *Pitho* were incompetent. The Serang of the *Pitho* was a Serang with over 20 years' experience. He held a certificate of competency as a Serang and when the collision occurred he had been Serang of the *Pitho* for 4 to 5 years. The quartermaster was first employed by the plaintiff in 1939 as a boatman and four years later worked on the *Pitho* as a deckhand for about 5 years during which period he was given instructions by a competent instructor in steering as a result of which he was promoted to be quartermaster in 1952 of another of the plaintiff's tugs, the *Skilful*. He did not, however, hold a helmsman's certificate of competency. During the period when he was quartermaster of the *Skilful* he had regularly acted as relief quartermaster of the *Pitho* and he was so acting on the day of the collision. Finding as I do that the collision occurred solely because of the wrongful execution by him of the Serang's order to turn to starboard, which is an isolated act of negligence, I do not consider bearing in mind his long experience as helmsman with no suggestion of any prior instances of negligence or unfitness that he was incompetent that day to carry out his duties as quartermaster of the *Pitho*. So far as the Serang is concerned, similar observations apply.

I must now consider the difficult question whether the plaintiff's towage conditions upon their true construction, are applicable so as to fix the liability for the loss of the plaintiff's tug on the defendants. I bear in mind that, according to the ordinary rules of construction, such conditions must be construed *contra preferentem*, and I accept Mr. Lloyd's contention that the burden rests on the plaintiff to establish that they have covered themselves by these towage conditions.

The first point to be considered is whether at the time of the collision these towage conditions have attached. Mr. Smith for the plaintiff submits that, upon their true construction and on the undisputed evidence that the tow line was at least being taken in by the crew of the *Pitho*, these towage conditions apply. Numerous cases were cited to me in argument on the construction of various towage conditions in use in the United Kingdom but I find they are of no direct assistance in the solution of this case. In all but one of the cases cited the towage contract specifically provided for or defined the period when the towage conditions commenced to apply. The one exception is the case of *The Baltyk*, [1] and though not directly applicable is of some considerable assistance. In that case the towage conditions contained, *inter alia*, the following:—

"It is further agreed that on the hiring of the Company's tugs for towage, docking, piloting, or assistance services, the master and crew of such tugs become in all respects the servants of and are identified with the ship, and are under the control of the person in charge of the ship, whilst the towage, docking, piloting, or assistance services are being performed.

Further, the hirer agrees to indemnify the Company against all losses, damage and claims whatsoever, including damage sustained by the tug . . . . even though caused by the neglect or default of the servants or agents of the Company."

The towage contract was for the towage of the defendant's steamship *Baltyk* by two tugs of the Manchester Ship Canal Company from Irwell Park to Eastham. During the towage whilst the *Baltyk* for her own purposes stopped at Partington to take in bunker coal, the tugs were cast off and instructed that the towage would be continued in a few hours, to remain available for that purpose and that a five-blast signal would be sounded by the *Baltyk* to indicate that the ship was ready for them. One of the tugs, the *Archer*, moored alongside a quay 230 yards from the ship. After a stay of seven hours, the *Baltyk* signalled for the tugs to return and continue the passage to Eastham. While manoeuvring to approach the *Baltyk* and to make fast to the *Baltyk* and about 100 feet from her the *Archer* negligently collided with the steamship *Salford City*, both vessels sustaining damage. The liability for the collision between the *Archer* and the *Salford City* having been settled on a basis of both vessels being equally to blame, and the defendants having accepted such settlement as being reasonable, the plaintiffs asked for a declaration that the defendants were liable to indemnify them under the towage contract in respect of their liability for such portion of the damage sustained and inflicted by the *Archer* as the plaintiffs did not recover under the settlement with the owners of the *Salford City*. The defendants however contended that at the time of the collision no towage or assistance services were being performed by the *Archer* either under the terms of the towage

contract or at all, and that the plaintiffs were not entitled to be indemnified.

In his judgment Pilcher J. found that "at the time when the *Archer* and *Salford City* were in collision the *Baltyk* was singling up her moorings preparatory to casting them off. Personnel were on her forecastle head ready to take the *Archer's* wires. On board the *Archer* the eye of the towrope had been placed on the towing hook. Her two towing wires in the form of a bridle were shackled to the towrope ready to be passed to the *Baltyk* and made fast one on either tow. If the collision had not occurred a heaving line would have been thrown to the tug as soon as she was in position and the tow wires hauled on board the *Baltyk*.

On those facts the learned Judge found that the *Archer* was at all material times under the control of the *Baltyk* in that she was ready to obey orders received from the ship and that the accident occurred when in pursuance of orders received from the ship she was manoeuvring into a position to establish connexion in order to continue the physical operation of towage and assistance which her owners had contracted to perform. Pilcher J. came to the conclusion that "when as in this case the contractual service of towage and assistance in its physical sense is interrupted for the ship's purposes it would be wrong to hold that an accident which occurs to a tug which in response to orders from the ship is manoeuvring in close proximity to her tow for the purpose of making fast did not occur, to use the words of the contract in this case, 'whilst the towage and assistance services are being performed'. To hold otherwise would in my view put an unduly limited construction on the fair and ordinary meaning of the words 'towage or assistance services,' even when those words appear in a clause of exception which . . . has to be construed *contra preferentem*."

The words used in the present case are "whilst carrying out towage service." The facts as I find them are that at the time of the collision the *Pitho* had in response to orders from the pilot manoeuvred herself into a position alongside the starboard bow of the *Takashima Maru* for the purpose of taking in the tow line, that one end of the tow line had been received by the crew of the *Pitho* though not made fast to the towing hook. I can find no real distinction between the words used in the present case and the words used in the *Baltyk* case. In my view on the facts of this case it would be wrong to hold that the collision did not occur, to use the words of the contract, "whilst carrying out towage service" and to hold otherwise would put an unduly limited construction on the fair and ordinary meaning of these words even when they appear in a clause of exception which has to be construed *contra preferentem*.

I have come to this conclusion notwithstanding the persuasive argument put before me by Mr. Lloyd that reading these towage conditions as a whole they would only operate when the *Takashima Maru* was in fact being towed or alternatively that reading these towage conditions as a whole they are open to more than one construction thereby creating an ambiguity which should be resolved, on familiar principles, against the plaintiff. He relies on the various expressions used — "will be towed"; "whilst carrying out towage service"; "vessel or craft towed"; "is in tow of or assisted by"; "on board the same so towed" — as creating an ambiguity. He however concedes that the words "is in tow of or assisted by" have a wider import than the words "whilst carrying out towage service". In my view the other expressions are plainly words used for the sole purpose of identifying the parties liable to indemnify.

It remains to consider, these towage conditions having attached at the time of the collision, whether they cover a case such as this, where the plaintiff has suffered damage by the loss of the plaintiff's own tug arising out of the negligence of the helmsman of the tug. Mr. Smith for the plaintiff relies on the first section of the towage contract whereby "the master and crew of any tug whilst carrying out towage service shall be deemed to be the servants of and shall be under the orders and control of the owners, master and crew of the vessel or craft towed". His contention is that this section of the towage contract effectually makes the master and crew of the *Pitho* servants for the time being of the owners of the *Takashima Maru* and that therefore the defendants are vicariously liable for the negligence of their temporary servants. He relies on *The President van Buren* [2] as a direct authority in his favour.

In that case the towage contract contained *inter alia* the following term: "The masters and crews of the tugs and transport men shall cease to be under the control of the Port Authority during and for all purposes connected with the towage or transport and shall become subject in all things to the orders and control of the master or person in charge of the vessel or craft towed or transported and are the servants of the owner or owners thereof." The Port Authority's tug *Sirdar* while engaged in assisting *The President Van Buren* collided with its tow and sustained damage. In an action by the Port Authority against the owners of *The President Van Buren* in respect of the damage caused to the *Sirdar*, Hill J. on a preliminary issue of law held that the effect of the towage contract was that even if the collision was solely caused by the negligent navigation of the plaintiff's tug the defendants were liable for the whole of the damage occasioned thereby. In the course of his judgment Hill J. said (at p. 256):

> "If the first section, which begins: 'The masters and crews of the tugs' and ends 'are the servants of the owner or owners' of the vessel towed, is effectual to do that which it sets out to do, it does not much matter what the rest of the conditions provide, because it will be that the Port of London Authority contemplates; and

if it effectually makes the masters and crews of tugs servants of the ship which is being towed — servants for the time being — then it will follow that the owner of the tow cannot claim for damage brought about by people who for the time being are his own servants; and he must also be liable for damage caused to the authority's property by persons who for the time being are his servants, the servants of the owners of the tow.

I have considered Mr. Batten's criticism. I think that clause does do what it sets out to do; and I think it sets out in terms that for all purposes connected with the towage the masters and crews of tugs are the servants of the owners of the tow. I do not think that can be limited in the way Mr. Batten suggests. I think it provides that for the purposes of the towage and for all purposes connected with the towage they are the servants of the owners of the tow. That, I think, is enough to show that for any negligence of those in charge of the *Sirdar* — the master and crew of the *Sirdar* — the owners of the *President Van Buren* are liable to the authority, that is to say, for any damage to the *Sirdar*, and cannot themselves claim in respect of any damage done to the *President Van Buren*."

Mr. Lloyd for the defendants on the other hand contends that this case is distinguishable in that the towage contract contained a specific undertaking by the owners of the tow to pay for any damage caused to the Port Authority's tug and that the above quoted passage is only *obiter*. I am unable to accept Mr. Lloyd's contention and I agree with Mr. Smith that the *President Van Buren, supra*, is a direct authority in his favour. In my view the first section of our towage contract effectually provides that whilst carrying out towage service the master and crew of the tug are the servants of the masters of the tow. As the collision occurred through the negligence of the helmsman of the *Pitho* whilst the *Pitho* was carrying out towage service, the defendants as owners of the *Takashima Maru* are vicariously liable to the plaintiff for the negligence of their temporary servants.

The plaintiff is accordingly entitled to damages for the loss of the *Pitho*, such damages to be assessed by the Registrar, with the assistance of Assessors if necessary, and to costs. The defendants must also pay the fees of the Assessor who assisted me which I fix at $150 per day.

Order accordingly.

Solicitors: *Donaldson & Burkinshaw; Drew & Napier.*

PALANIAPPA CHETTIAR v. S. SOLAI

[O.C.J. (Ong J.) May 15, 1961]

[K.L. — Probate No. 80 of 1958]

Probate and Administration — Grant of Letters of Administration to non-resident — Validity — Failure to disclose previous grant to third person — Administrator next-of-kin of deceased — Application for revocation — Applicant interested as alleged beneficiary of property — Probate and Administration Ordinance, 1959, ss.29, 30.

Practice and Procedure — R.S.C., 1957, O.52 — Whether to proceed by motion or action.

The respondent, who was resident in Singapore, obtained letters of administration to the estate of his grandfather which consisted of a piece of land. The respondent failed to disclose to the Court that a grant to the same property had been made to one Annamalai who was the attorney of one Kasi, alleged to be one of the beneficial owners of the property. Some time later Kasi died. The applicant, as administrator of another of the alleged beneficial owners of the property applied for an order that the grant of letters of administration made to the respondent be revoked.

Held: (1) section 29(c) of the Probate and Administration Ordinance, 1959, does not operate to disqualify and disable absolutely any non-resident from obtaining a grant of letters of administration if he is otherwise a fit and proper person and circumstances render it expedient that the grant should be made to him;

(2) the respondent's failure to disclose to the Court the previous grant of letters of administration made to Annamalai was not of such culpable character as to amount to sufficient cause for revocation;

(3) on the death of Kasi the power of attorney granted to Annamalai was automatically revoked and it was therefore not necessary that the void grant should have been formally revoked;

(4) in any event, the applicant was not competent to apply for the revocation, he having no interest, until he proved that the property was trust property.

Cases referred to:—

(1) *Re Sevugan Chettiar* [1949] M.L.J. 255.
(2) *Re Dinshaw* [1930] P. 180.
(3) *Suwerkop* v. *Day* 112 E.R. 975.
(4) *Re Syed Abdullah* [1939] M.L.J. 179.
(5) *Re Murugappa Chettiar* [1940] M.L.J. 178.

MOTION.

W. H. Sault for the applicant.
R. Ramani for the respondent.

Cur. Adv. Vult.

Ong J.: This is a motion by the applicant for an order that the grant of letters of administration to the estate of Supramanian deceased made by this Court on February 20, 1960 to the respondent be revoked, and that the respondent's petition for letters of administration and all proceedings subsequent thereto be set aside.

The deceased Supramanian, died in India intestate as long ago as December 9, 1912. The estate consists of a half-share in Kuala Lumpur Grant for Land No. 578 and Certificate of Title No. 1485 valued then for purposes of estate duty at $7,100. Its present value is in six figures.

The history of this property, so far as it is relevant to the conflicting claims of the parties herein, goes back about 60 years. I do not think any useful purpose can be served by going into such history at all, much less since each party has put forward his own version, and no decision is called for as to the merits in the present proceedings. For convenience I propose to refer to the applicant hereinafter as Palaniappa and to the respondent as Solai.

The property was registered in the name of Supramanian, some time before his death, as proprietor of a half-share. I shall refer to it hereinafter as "the property." Solai is the only grandson of Supramanian and on April 2, 1958 he filed his petition for a grant of letters of administration to the property as such grandson and next-of-kin. He duly filed also the written consent of the other surviving next-of-kin, who are his father and aunt.

Palaniappa claims that the property is trust property held by Supramanian in trust for the three former partners of a money-lending firm known as "P.M.S." of which Supramanian was for some time the manager. Palaniappa is a son of one of the partners, Lakshmanan, and administrator of his father's estate. That partner-